

REFERENCE TITLE: **deed restrictions; private covenants**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2659**

Introduced by  
Representatives Clark, Burges, Paton: Biggs, Kavanagh, Nichols, Weiers JP

### **AN ACT**

**AMENDING TITLE 33, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-440; RELATING TO CONVEYANCES AND DEEDS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Title 33, chapter 4, article 3, Arizona Revised Statutes,  
3 is amended by adding section 33-440, to read:

4       33-440. Enforceability of private covenants; definitions

5       A. AN OWNER OF REAL PROPERTY MAY ENTER INTO A PRIVATE COVENANT  
6 REGARDING THAT REAL PROPERTY AND THE PRIVATE COVENANT IS VALID AND  
7 ENFORCEABLE ACCORDING TO ITS TERMS IF ALL OF THE FOLLOWING APPLY:

8           1. THE PRIVATE COVENANT IS NOT PROHIBITED BY ANY OTHER EXISTING  
9 PRIVATE COVENANT OR DECLARATION AFFECTING THE REAL PROPERTY AND DOES NOT  
10 VIOLATE ANY STATUTE GOVERNING THE SUBJECT MATTER OF THE PRIVATE COVENANT THAT  
11 IS IN EFFECT BEFORE THE EFFECTIVE DATE OF THIS SECTION.

12           2. THE OWNER OF THE REAL PROPERTY AFFECTED BY THE PRIVATE COVENANT AND  
13 ANY PERSON ON WHOM THE PRIVATE COVENANT IMPOSES ANY LIABILITY OR OBLIGATION  
14 HAVE CONSENTED TO THE PRIVATE COVENANT.

15           3. ANY CONSENT REQUIREMENTS CONTAINED IN THE EXPRESS PROVISIONS OF ANY  
16 EXISTING PRIVATE COVENANT OR DECLARATION AFFECTING THE REAL PROPERTY HAVE  
17 BEEN MET.

18       B. A PRIVATE COVENANT IS DEEMED NOT TO CONSTITUTE AN AMENDMENT TO ANY  
19 EXISTING PRIVATE COVENANT OR DECLARATION UNLESS THE PRIVATE COVENANT  
20 EXPRESSLY VIOLATES AN EXPRESS PROVISION OF THE EXISTING PRIVATE COVENANT OR  
21 DECLARATION.

22       C. FOR THE PURPOSES OF THIS SECTION:

23           1. "DECLARATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 33-1802.

24           2. "PRIVATE COVENANT" MEANS ANY UNIFORM OR NONUNIFORM COVENANT,  
25 RESTRICTION OR CONDITION REGARDING REAL PROPERTY THAT IS CONTAINED IN ANY  
26 DEED, CONTRACT, AGREEMENT OR OTHER RECORDED INSTRUMENT AFFECTING REAL  
27 PROPERTY.